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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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:: JUDGMENT ::

Rajasthan State Road Transport Corporation Vs. Smt. Radha & Ors.

S.B. CIVIL MISC. APPEAL NO.1422/2006.

Against the judgment and award dated 27.03.2006 made by the Motor Accidents Claims Tribunal, Balotra in Claim Case No.26/2004.

Date of Judgmentr :: 05.10.2006.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. V.K. Vyas, for the appellant.

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BY THE COURT:

By way of this appeal, the owner of the vehicle involved in the accident seeks to question the award dated 27.03.2006 made by the Motor Accidents Claims Tribunal, Balotra in Claim Case No.26/2004 awarding compensation in the sum of Rs.12,85,000/- to the wife, children and father of the victim of accident, Mohan Lal, who was 40 years in age and was earning salary income of Rs.9,858/- per month as teacher in a Government School.

The deceased met with his untimely end on 09.09.2003 when the jeep he was travelling in bearing registration No. RJ 24 T 1308 was hit head-on by a bus bearing registration No. RJ 24 P 1229 belonging to the appellant and driven by non-applicant No.2, Jabar Singh. Narrating the incident, the wife and children of the deceased Mohan Lal claimed compensation arraying the owner and driver of the aforesaid bus and so also the owner and insurer of the jeep as non-applicant Nos. 1 to 4 respectively. The father of the deceased was added as non-applicant No.5.

The appellant contested the claim application, inter alia, with the submissions that the accident occurred for the negligence of the jeep driver and in his absence the claim application was not competent. The father of the deceased questioned the jurisdiction of the Tribunal with reference to the place of residence of the claimants and also submitted that he was entitled to compensation being a dependent of the deceased.

After framing of the issues, in evidence, the claimants examined the wife of the deceased Smt. Radha Devi as AW-1, brother-in-law of the deceased Puran Prakash

as AW-2 and an eye-witness to the accident Chetan Ram as AW-3 and also produced relevant documentary evidence. Non-applicant No.5, father of the deceased appeared in evidence as NAW-1 and examined his son Moti Lal as NAW-2.

After hearing the parties, the Tribunal has held the accident to have occurred for rash and negligent driving of the bus in question that resulted in death of Mohan Lal, rejected the objection regarding jurisdiction with reference to the place of residence of the claimants at Balotra and also rejected the objection of the appellant about non-impleadment of the jeep driver as a party in the claim application. In issue No.7, the Tribunal has held all the applicant Nos. 1 to 5 and so also the non-applicant No.5 to be dependents of the deceased. For quantification of compensation in issue No.2, the Tribunal has noticed the monthly income of the deceased at Rs.9,858/- with reference to his last pay certificate Ex.26; and with reference to the facts that the deceased was employed as a teacher in a Government School, was in a settled employment and was likely to earn increments; and with reference to the future prospects, took the average monthly income of the deceased at Rs.12,000/-; and after deducting one-third for the personal expenditure of the deceased, took the dependency at

Rs.96,000/- per annum. The appellant submitted for reduction of pecuniary loss amount with reference to the fact that the claimant No.1 was earning Rs.3,600/- per month as salary on being accorded compassionate appointment on Class IV post; and that the amount of State Insurance, GPF etc. received by the claimants be also taken into consideration. The Tribunal observed that such components of the benefits received by the claimants cannot be deducted from the amount of compensation but then, with reference to the likelihood of higher income tax payable by the deceased on enhancement in salary, made a deduction of Rs.6,000/- and, therefore, assessed net dependency at Rs.90,000/- per annum. The Tribunal referred to the age of the deceased at 40 years and with reference to the age of the claimants and other factors considered it appropriate to apply a multiplier of 14 to assess the pecuniary loss at Rs.12,60,000/-. The Tribunal further allowed Rs.5,000/- to the wife of the deceased for loss of consortium and Rs.3,000/- to each of the children for loss of love and affection of their father and Rs.6,000/- to the non-applicant, father of the deceased for loss of services of his son. The Tribunal also allowed Rs.2,000/- towards funeral expenses and in this manner held that the claimants were entitled for compensation in the sum of Rs.12,85,000/- and allowed interest @ 6% per annum from 12.02.2004.

The appellant seeks to contend in this appeal that the Tribunal has erred in holding the bus driver responsible for the accident and the finding on the negligence of the bus driver is based on surmises and conjectures; that the accident occurred for the fault of the jeep driver and the Tribunal has not considered the site inspection report Ex.4; that even if it were a case of composite negligence of bus driver and jeep driver, the liability for compensation was required to be apportioned; that the Tribunal has not deducted the benefits derived by the claimants after the death of the victim and of his wife having been accorded compassionate appointment and she being earning Rs.3,600/- per month therefrom; and that the Tribunal has applied the multiplier on the higher side and has awarded excess amount towards non-pecuniary loss.

Having heard learned counsel for the appellant and having examined the impugned award dated 27.03.2006, this Court is satisfied that the award in question on its finding on negligence and responsibility of the appellant's driver towards accident is perfectly justified; and so far the amount of compensation awarded by the Tribunal is concerned, on the facts and in the circumstances, the same remains rather moderate and in any case not excessive.

So far the responsibility towards accident is concerned, the Tribunal has examined and dealt with the evidence on record including the testimony of the eye-witness Chetan Ram, AW-3 that the jeep was proceeding in its correct side in reasonable speed and that the bus was in a brisk speed and hit the jeep on wrong side. Noteworthy it is that the driver of the offending bus, Jabar Singh, though in the employment of the appellant RSRTC, has not been produced in evidence and an adverse inference is definitely required to be drawn against the appellant. There does not appear any infirmity in the finding arrived at by the Tribunal. Even if, in the context of the deceased, an occupant of the jeep, the case be taken to be of composite negligence of the drivers of the two vehicles, so far the claimants are concerned they are obviously entitled to claim compensation against both or any set of tortfeasors. Viewed from any angle, the appellant remains liable for compensation.

So far quantum of compensation is concerned, the suggestion made by the appellant for making substantial deduction in the figure of dependency with reference to the GPF and other amount received by the claimants, remains bereft of substance. Such amount being nevertheless the

property of the claimants, the appellant is not entitled to suggest the same to be used for the purpose of reduction of the amount of dependency. The principle is that what is to be deducted is the amount payable on account of the death as distinguished from the amount payable at the time of death and a tortfeasor cannot ask for deduction of the pension or provident fund amount. The compassionate appointment is accepted by the wife of the deceased under the force of circumstances and the salary income under the said employment is earned by putting her own labour in the job. The appellant is not justified in asking for deduction of the salary income of the wife of deceased from the amount of loss of dependency with reference to such compassionate appointment. This Court in the case of State of Rajasthan & Anr. Vs. V. Indira Devi & Ors. : S.B. Civil Misc. Appeal No.44/1993 decided on 18.08.2006, where the deceased met with his end while travelling in the vehicle of his employer and when the employer itself had provided compassionate appointment to the wife of the deceased has held thus:

> "The principle is what is to be deducted is the amount payable on account of death as distinguished from the amount payable at the time of death. Gratuity and GPF amount are nevertheless the property of the claimants and it sounds unjustified on the part of a tortfeasor to suggest such amount to be deducted from compensation recoverable from him. Of course, the component of the benefit derived on account of compassionate appointment of

> wife of the deceased could be reasonably accounted for but here again the appellants are not justified in suggesting that entire of the salary earned by the wife of the deceased be deducted while assessing the loss. The wife of the deceased is required to accept such compassionate appointment under the force of circumstances after compromising against the amenities of life otherwise enjoyed and the income is earned by putting her own labour into the job. A reasonable component of the benefit derived from compassionate appointment could only be taken into consideration and it cannot be suggested that the entire earning out of compassionate appointment is required to be deducted."

In the present case, it is further noticed that the Tribunal has yet been restrictive in assessment of the average income of the deceased. Admittedly, the deceased was earning salary income of Rs.9,858/- per month. It has not been shown that this figure of monthly income comprised of any component that was required to be deducted. When the deceased was 40 years in age and was in a settled employment, there was no reason for the Tribunal not to have taken his average monthly income 1.5 times the last income, i.e. in or around Rs.14,700/- per month. Even after providing for a substantial component towards income tax and so also on personal expenditure of the deceased, the average dependency would stand much higher than the amount of Rs.90,000/- per annum (i.e. Rs.7,500/- per month) adopted by the Tribunal.

Moreover, the deceased was 40 years of age and the facts have been established on record that his wife, being the second wife, was 22 years in age and the claimant Nos.2 to 4, being the children from the first wife of the deceased, were respectively of 13, 11 and 9 years in age whereas the claimant No.5 was 4 years in age. The non-applicant No.5, father of the deceased was of course 75 years in age. In the total family set-up a multiplier of 15 could definitely have been provided. The assessment of pecuniary loss, therefore, has fallen much on the lower side and whatever component of benefit is derived by the claimants with reference to the compassionate appointment of the wife of the deceased as referred by the appellant, the same is effectively set off by the component of pecuniary loss that has already been declined by the Tribunal by restricting on future prospects and so also on the multiplier. The Tribunal has been further restrictive and has not awarded reasonable amount towards non-pecuniary loss. The amount of Rs.5,000/- to the wife of the deceased towards loss of consortium and Rs.3,000/- to each of the children for loss of love, affection and guidance of their father obviously fall towards inadequacy.

In the ultimate analysis, the award made by the Tribunal in the sum of Rs.12,85,000/- in the fact situation of the present case turns out to be rather moderate and challenge to the quantum of compensation by the appellant is totally meritless.

The upshot of the discussion aforesaid is that this appeal is totally bereft of substance and does not merit admission.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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